

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Joaquin Cardona Sandoval,)	CASE NO.: 4:09CV2841
)	
Petitioner,)	JUDGE JOHN ADAMS
)	
)	
Harley G. Lappin, et al.,)	<u>ORDER AND DECISION</u>
)	
Respondents.)	
)	

This matter appears before the Court on a petition filed by Joaquin Cardona Sandoval pursuant to 28 U.S.C. § 2241. In his petition, Sandoval contends that Respondents are improperly calculating his good time credits. Upon due consideration, the Court finds no merit in the petition. Therefore, it is ordered that the petition is hereby DENIED.

Sandoval's petition contends that the Bureau of Prisons is improperly interpreting and applying 18 U.S.C. § 3624(b). § 3624(b) provides in relevant part that

a prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons[.]

Sandoval contends that the BOP improperly interprets "term of imprisonment" to mean time served. As a result, Sandoval receives 47 days of good credit per year, rather than the maximum of 54 days contained in the statute.

This Court and the Sixth Circuit have previously rejected the precise argument raised by Sandoval. *See Ahmed v. Attorney General*, Case No. 4:06CV1575, 2007 WL 397045, at *2 (N.D. Ohio Jan. 31, 2007); *Petty v. Stine*, 424 F.3d 509, 510. In *Petty*, the Sixth Circuit determined that the BOP's interpretation of the statute was reasonable and therefore affirmed denial of Petty's § 2241 petition. This position has been nearly universally accepted. *See, e.g., Tablada v. Thomas*, 533 F.3d 800 (9th Cir. 2008); *Kikumura v. Hood*, 467 F.3d 1257 (10th Cir. 2006); *O'Donald v. Johns*, 402 F.3d 172 (3d Cir. 2005). Accordingly, Sandoval's petition must be denied.

I. Conclusion

Having found no merit in the grounds raised by Petitioner, the Court orders that the Petition be DENIED. The Court recognizes that the United States Supreme Court recently granted certiorari on this precise issue. *See Barber v. Bureau of Prisons*, 225 Fed. Appx. 596 (9th Cir. 2007) cert. granted on November 30, 2009.¹ However, given the binding Sixth Circuit precedent of *Petty*, the Court certifies, pursuant to 28 U.S.C. § 1915(A)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed.R. App.P. 22(b)..

IT IS SO ORDERED.

December 11, 2009

/s/ John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE

¹ The citation for this grant of certiorari was not available at the time of this opinion. However, the grant can be found on the online docket for Barber's appeal, 09-5201, on the U.S. Supreme Court's website.